



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11911842

Date: APR. 28, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an analytical chemist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. At the time of filing, the Petitioner was working as a research scientist at [REDACTED] [REDACTED]⁵ He previously served in research assistant positions while attending the University [REDACTED] [REDACTED] and the University [REDACTED] from 2011 – 2017.

At initial filing, regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner asserted:

[He] proposes to continue his research on the development of [REDACTED] sensors, robust algorithms, and efficient platforms for understanding, analyzing and detecting chemicals in a [REDACTED] environment His research in his area is of great importance because it helps in the development of [REDACTED] based on [REDACTED] [REDACTED] for effectively detecting [REDACTED] such as [REDACTED] [REDACTED] in the human body. [REDACTED] is a highly sensitive technique that allows the detection of molecules in very low concentrations and provides rich structural information that not only helps in preventing various diseases but also assists in the development of new drugs and medical devices [REDACTED] are widely used in a variety of sectors and its capability of enhancing productivity and analytical operation has resulted in an increased demand in major areas of industry including healthcare, [REDACTED] food safety testing, and [REDACTED] development. [His] [REDACTED] research helps in addressing this increased demand through the development of [REDACTED] for detecting chemicals and applying [REDACTED] methods to understand the chemical and physical behavior of [REDACTED] during their screening, development, formulation, and manufacturing stage.

In support of his claims, the Petitioner pointed to a job letter from [REDACTED] reflecting a general overview of the job duties for a "Research Scientist I" position and a report from marketwatch.com regarding the growth of the [REDACTED] market. Pertaining to the substantial merit of his proposed endeavor, he referenced advisory opinion letters from [REDACTED] and [REDACTED] who discussed the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in chemistry from the University of [REDACTED] in January 2018.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

Petitioner's previous research and work with [REDACTED]⁶ For instance, [REDACTED] indicated that the Petitioner "has developed a novel [REDACTED] sensor with heightened sensitivity and selectivity that allows for an increased [REDACTED] and "has developed a method more suitable in the detection of [REDACTED] than the original gold standards." [REDACTED] stated that the Petitioner "has successfully developed a novel [REDACTED] sensor for the [REDACTED] detection of [REDACTED] in living cells with higher sensitivity, efficiency, and selectivity than other sensors." In addition, the Petitioner argued that his proposed endeavor had broad implications in the field and presented statistics relating to [REDACTED] and a document from the U.S. Department of Health and Human Services regarding the risk of cancer from exposure to [REDACTED]

In arguing the national importance of his proposed endeavor, the Petitioner again cited to the letters from [REDACTED] and [REDACTED] who discussed his past research. For example, [REDACTED] stated that "[t]hrough the utilization of his method, researchers are now more able to mitigate the adverse effects of [REDACTED] and risk of cancer," and [REDACTED] indicated that "[t]hrough rigorous research, [the Petitioner] has developed a new [REDACTED] strategy that plays a key role in the early diagnosis of [REDACTED] and [REDACTED] monitoring, offering the United States scientific community and medical industry an invaluable opportunity." In general, the Petitioner's previous [REDACTED] research and findings relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. In this case, the Petitioner broadly claimed that he would continue his research and referenced general statistics of [REDACTED] and [REDACTED] and a document relating to [REDACTED]. The Petitioner did not differentiate his past research from his prospective endeavor. Furthermore, the Petitioner did not demonstrate the nexus between his proposed endeavor and the possible impact on [REDACTED] and [REDACTED] that might show its national importance.

In response to the Director's request for evidence (RFE), the Petitioner reiterated his past research, such as "[the Petitioner] has been instrumental in the development of [REDACTED] sensors that effectively detect even very small concentrations of [REDACTED] and [REDACTED] in the human body," "[the Petitioner's] research provides an effective tool for monitoring important [REDACTED] in the blood that provide researchers and clinicians with an improved understanding of [REDACTED]," and "[the Petitioner's] development of this sensor provides an outstanding tool for the detection of [REDACTED] in the human body."⁷ Moreover, the Petitioner referenced the marketwatch.com article and claimed that "[t]he improvements that [he] has made through his development of effective and [REDACTED] sensors naturally benefit the market for [REDACTED] devices." Again, the Petitioner made arguments relating to his past research rather than how his proposed endeavor would be nationally important. Further, the Petitioner did not explain or demonstrate how his proposed endeavor would impact the [REDACTED] market.

In addition, the Petitioner submitted in response to the Director's RFE his personal statement listing three current projects: 1) comprehensive identification of the [REDACTED] population present in

⁶ The record contains additional recommendation letters from [REDACTED] and [REDACTED] who also addressed the Petitioner's prior [REDACTED] research and work.

⁷ The Petitioner also submitted an updated employment letter that praised him for his professional accomplishments at [REDACTED]

[redacted] products and their manufacturing processes, 2) developing non-invasive and innovative [redacted] method to characterize the [redacted] structure of [redacted] products, and 3) developing non-invasive [redacted] method to monitor [redacted]. The Petitioner's statement did not address the national importance of his initial claims, nor did it demonstrate the connection between his research projects and [redacted] or [redacted]. In fact, the Petitioner discussed entirely new research relating to [redacted] structure of [redacted] products, and [redacted]. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the Petitioner submitted screenshots from [redacted] and [redacted] highlighting statistics for the overall [redacted] market and [redacted] expenditure. The Petitioner did not show the connection between these general figures and his revised proposed endeavors.

On appeal, the Petitioner contends his past research and findings, such as "we included statistics from the [redacted] pertaining to [redacted]'s disease, a condition that [his] research on [redacted] sensors was effective in helping to diagnose" and his "[redacted] sensor was effective in detecting [redacted]" (emphasis added). In addition, the Petitioner references the previously discussed letters from [redacted] and [redacted] "highlight[ing] the public health threats posed by [redacted] and [redacted] respectively, thus providing additional evidence of the critical value of [his] research on [redacted] detection development to national interests." Again, the Petitioner's arguments relate to his previous research rather than his initial proposed endeavor. The Petitioner also submits a document entitled, "[redacted]" by the Congressional Research Service arguing that "this level of interest by itself suggests that the benefits of safer treatments are undoubtedly considered substantial." The document, however, pertains to the Food and Drug Administration's approval process without specifically showing the government's interest in the Petitioner's proposed research.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Although he relies on his past research and work, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not shown eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established his eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.